IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Appeal from Order No.214 of 2007.

Bhaskar Devaji Koli
& Another. ..Appellants

versus

Pandurang B. Patil
& Others ..Respondents

Mr.P.S.Dani for the Appellant

Ms. Gauri Godse for the Respondent

Coram : S.R.Sathe, J.
Dated : 10th Sept., 2007

P.C.

1. Heard both the learned advocates at length. A.O. heard finally at admission stage.

2. Appellant-the Original Defendant in Regular Civil Suit No.8 of 2006 has preferred this appeal against the Order passed below Exhibit 5 in Civil Appeal No.184 of 2006 whereby the application filed by the unsuccessful original plaintiff for temporary injunction restraining the original defendants from disturbing the plaintiffs possession of the suit property described in detail in para 1 of the plaint was allowed and the present appellants-the respondents in appeal No.184 of 2006 were restrained from obstructing the plaintiffs possession of the

suit property. For the sake of convenience, hereafter the parties shall be referred to as plaintiffs and defendants.

3. Brief facts giving rise to this appeal are as under:

. It is the plaintiffs' case that he purchased the suit property situated in Gavthan of village Kashmire admeasuring 3 gunthas 300 sq.mts for Rs.95,000/- from Sadashiv Harishchandra Rodekar and five others. He also received possession of the said property on the date of sale deed. When he went to the said property for cleaning the same, the defendant and his family members came to the suit property and gave threats to plaintiff. Plaintiff, therefore, filed a complaint against the defendant on 10.1.2006 and filed the present suit on 13.1.2007 for declaration that the suit property is owned and possessed by him and for permanent injunction restraining the defendants from obstructing the plaintiffs possession of the suit property.

4. The plaintiffs also filed an application Exhibit 5 for temporary injunction. The learned

trial Judge initially issued notice to the defendants as defendants had filed caveat.

5. The defendants filed their written say and opposed the application. They contended that the description of the suit property is not correct and the plaintiffs' vendor Redekar was in fact not having any right, title to the suit property and Redekar were never in possession of the suit property. The defendants contend that since his ancestors they are in possession of the suit property. They, therefore, prayed for dismissal of the application.

6. Both the parties filed their affidavit and the affidavits of some of the witnesses and produced certain documents. After considering the said material, the learned trial Judge was pleased to grant temporary injunction against the defendants.

7. The defendants, thereafter submitted an application that the suit be decided expeditiously and in the meantime parties be directed to maintain statusquo because taking advantage of the temporary injunction granted in favour of the plaintiffs, the

plaintiffs are likely to take possession.

8. After hearing both the learned advocates, the learned trial Judge passed order and directed the parties to maintain status quo. Thereafter the learned trial Judge decided the suit on merits and held that the plaintiffs have failed to prove that their vendor Redekar was having title to the suit property. Naturally, he dismissed the plaintiffs suit.

9. Being aggrieved by the said order the Original Plaintiff filed Civil Appeal No.184 of 2006 in the District Court of Raigad. The plaintiffs also submitted an application Exhibit 5 and prayed that temporary injunction be granted against the defendants restraining them from obstructing the plaintiffs possession till the disposal of the appeal. The said application was strongly opposed by the defendants. After hearing both the learned advocates, the learned Ad-hoc Additional District Judge, Raigad came to the conclusion that from the documentary evidence produced on record it appears that the suit property is in possession of the plaintiffs and the plaintiffs have made out a prima

face case. He, therefore, passed the following order below Exhibit 5.

> "Appeal is allowed with costs.
>
> 2. Respondents or any person through them are restrained from disturbing the possession of the appellants over the suit property and not to disturb the possession of the appellants over the suit property.

10. The defendants have challenged the above mentioned Order in this appeal. Shri Dani, learned Advocate for the Appellant has urged two points. Firstly he submitted that once after having fair trial, the learned trial Judge had recorded the finding that the plaintiffs are not having title to the suit property and are not in possession of the suit property. So, it was not proper on the part of the First Appellate Court to how grant temporary injunction without pointing out as to who the finding recorded by the learned trial Judge, Raigad was prima facie incorrect. Secondly, he canvassed before me that the plaintiffs have in fact failed to prove title of their vendor and the plaintiffs have even admitted in the cross examination that he did not receive the possession of the suit land on the

date of the sale deed. So, under such circumstances, the Order passed by the learned Adhoc District Judge is illegal and the same be set aside.

11. As against this, Ms. Gauri Godse, learned advocate for the original plaintiffs strenuously argued before me that in the sale deed executed in favour of plaintiffs, it is clearly mentioned that plaintiffs have given possession of the suit land. Plaintiffs have also produced certain Tax receipts and as such the First Appellate Court rightly held that the plaintiffs have made out a prima facie case. Secondly, she canvassed before me that without bringing all the facts to the notice of this Court, the Order with regard to status quo has been obtained. She, therefore, submitted that the appeal be dismissed.

12. At the outset it must be mentioned that since beginning the defendants have contended that the description of the suit property is not correct. It is worth to note that there is in fact dispute as to whether the suit property is situated at village Kashmirewadi or whether it is situated at Burudwadi. Admittedly, no house number or property number or

Survey number of the suit property is mentioned in the plaint. Even though plaintiffs have produced certain tax receipts, the learned Trial Judge has rightly observed that in respect of the open land situated within the limits of village and which not used for agricultural purpose, the property is not assessed for taxes and taxes are not recovered. Even witness Bhiva Bemtya Patil who is examined by the plaintiffs have admitted that in their village Kashmirewadi the suit property is not assessed for Revenue. So, under such circumstances, the receipts produced by the plaintiffs were of no use to prove that the said receipts are actually pertaining to the suit property.

13. Much is made about the fact that plaintiffs got the suit property by virtue of registered Sale Deed executed by Redekars. However, when defendants had specifically contended that Redekar had no title to the suit property, it was necessary for the plaintiffs to adduce sufficient evidence to show that Redekars had in fact title to the suit property and the said title was passed on to them. However, the plaintiffs have totally failed to show that the property was actually owned by Redekar. It was

infact necessary for the plaintiffs to adduce some evidence from Gram Panchayat in that behalf, but, plaintiffs have not done so. Merely because some sale deed is executed by Redekars, that by itself is not sufficient to hold that plaintiffs have acquired valid title to the suit property.

14. It was strenuously argued on behalf of the plaintiffs that in the sale deed, there is recital regarding handing over of possession. However, it is pertinent to note that the plaintiff himself has admitted in the cross examination that on the date of sale deed, he did not receive the possession. This admission becomes more important particularly when we find that there is evidence on record to show that even prior to the execution of the sale deed there was dispute between the parties regarding the possession of the suit property. It has also come on record that there is some pendol and two structures of temporary nature on the suit land. However, there is no mention of the same in the sale deed. So, taking into consideration all these facts and having regard to one admitted position that after full trial, the trial Court has recorded a finding that plaintiffs have failed to prove their

title and possession over the suit property, it was not proper on the part of the First Appellate Court to grant the injunction, particularly when there was no other prima facie evidence to show that the plaintiffs are in actual possession. The First Appellate Court has also not specifically observed that the finding recorded by the learned trial Judge while deciding the suit is totally erroneous or is against the evidence on record and as such it is necessary to grant temporary injunction. So, in such circumstances, I think that the Order passed by the learned First Appellate Court is not sustainable. Incidently, it must be noted that while passing Order below Exhibit 5, the First Appellate Court has in fact said that the appeal is allowed. Not only that, but even while passing further Order he has nowhere stated that the injunction granted by him is only upto the disposal of the appeal. So, while deciding Exhibit 5 he has practically decided the entire appeal. So the said order is not correct.

15. It was tried to be argued on behalf of the plaintiffs that during the pendency of the suit all along there was injunction order in operation

against the defendants. However, as mentioned earlier it is very clear that on 17.2.2006 the learned Trial Judge had in fact passed an order regarding maintaining status quo because in that application Exhibit 36, the defendants had alleged that on the basis of the temporary injunction granted in favour of the plaintiffs they are likely to take possession of the suit property from defendants. So, in such circumstances, it cannot be said that during the pendency of the suit and till the time this Court passed Order, the injunction was in operation against the defendants.

16. Taking into consideration all these aspects, I think that it is necessary to set aside the Order passed by the learned Ad hoc Additional District Judge. Hence, I pass the following order :

ORDER

. A.O. is allowed.

2. The Order passed by the learned Adhoc Additional District Judge below Exhibit 5 in Civil Appeal No.184 of 2006 is set aside and the said

application is rejected.

(S.R.Sathe, J.)